

JUN 02 2008

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

ERIC LAMBERT TUNE,  
Plaintiff,

v.

J. SANDIDGE, et al.,  
Defendants.

) Civil Action No. 7:07cv00347

) **ORDER ADOPTING REPORT**  
) **AND RECOMMENDATION**

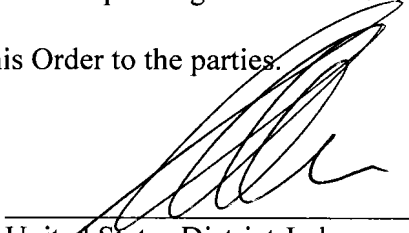
) By: Samuel G. Wilson  
) United States District Judge

Eric Lambert Tune brings this suit pursuant to 42 U.S.C. § 1983, claiming that police officer defendant Sandidge utilized excessive force when arresting Tune and Chief of Police defendant Timothy J. Longo, Sr., is responsible for defendant Sandidge's actions under the theory of supervisory liability.<sup>1</sup> Defendants Sandidge and Longo filed a motion to dismiss, and the court referred the matter to United States Magistrate Judge Michael F. Urbanski for a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge subsequently filed a report, finding that although Tune's complaint stated a claim against defendant Sandidge, it failed to state a claim against defendant Longo. Accordingly, the Magistrate Judge recommended that the court deny the motion to dismiss as to defendant Sandidge, but grant it as to defendant Longo and dismiss him as a party to this action. Neither party has filed objections. Having reviewed the Magistrate Judge's Report and Recommendation and pertinent portions of the record, the court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Magistrate Judge's Report and Recommendation is **ADOPTED** in its entirety; defendants' motion to dismiss (docket #23) is **GRANTED in part** as to Tune's claim against defendant Longo and **DENIED in part** as to Tune's claim against defendant Sandidge; the court **DISMISSES** Tune's claim against defendant Longo; and defendant Longo is **TERMINATED** as a defendant to this action. This action remains pending as to defendant Sandidge.

The Clerk of the Court is directed to send copies of this Order to the parties.

ENTER: This 21 day of June, 2008.

  
United States District Judge

<sup>1</sup> Tune also named two other police officers, John Doe 1 and John Doe 2 as defendants to this action; however, the court dismissed these defendants by separate Order entered October 15, 2007.